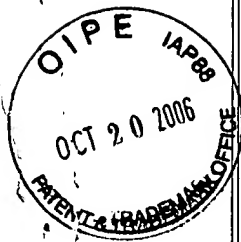


RECEIVED

OCT 27 2006

OFFICE OF PETITIONS

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE



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Takayoshi SUZUKI et al. :  
Appln. No. 09/273,286 : Art Unit - 3737  
Filed: March 19, 1999 :  
For: OPHTHALMIC APPARATUS : Docket No. K036-3629

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COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, VA 22313-1450

RENEWED PETITION UNDER 37 CFR §1.181

S I R:

Applicants respectfully renew their petition under 37 CFR §1.181 for withdrawal of the Notice of Abandonment mailed November 10, 1999 in light of the Decision on Petition mailed August 16, 2006, the following showing and the accompanying Adams Declaration.

Statement of Facts

The present application became abandoned for failure to timely pay the issue fee in response to a Notice of Allowance and Issue Fee Due mailed July 6, 1999. The PTO subsequently mailed a Notice of Abandonment on September 10, 1999.

MAILING CERTIFICATE ON PAGE 6

Applicants' Petition for Withdrawal of the Notice of Abandonment ("Petition") states that the attorneys of record did not receive either the Notice of Allowance and Issue Fee Due or the Notice of Abandonment and made a showing as to non-receipt of the Notice of Allowance and Issue Fee Due. The Decision on Petition ("Decision") states that no showing has been made to establish non-receipt of the Notice of Abandonment and further states that the one communication from the PTO that was received by applicants, namely, the Filing Receipt, has not been entered on the file jacket. In view thereof, the Decision states that there are circumstances that point to a conclusion that the Office action may have been lost after receipt rather than a conclusion that the Office action was lost in the mail.

As stated in the Adams Declaration, it is the practice of the attorneys of record to enter the official filing date and application number of an application on the front face of the file jacket upon receipt of the Filing Receipt from the PTO. This was done in the present case as shown by the copy of the front face of the file jacket annexed to the original Petition. In this regard, it is noted that the printed matter on the front face of the file jacket includes, beneath the name of the inventor, the notation "SERIAL NO." followed by a blank space for entry of the

application number and "FILED" followed by a blank space for entry of the filing date. When a Filing Receipt is received, the application and the filing date are entered on the front face of the file jacket, and there is no other location on the file jacket for entry of this data. A copy of the Filing Receipt is annexed as Exhibit A to the Adams Declaration.

With respect to the Notice of Abandonment mailed September 10, 1999, if such had been received by the attorneys of record, a docket entry therefor would have been made in the Master Docket Book under the date of November 10, 1999, which is two months from the date of mailing of the Notice of Abandonment. Annexed to the Adams Declaration as Exhibit B is a true and correct copy of the complete page of the Master Docket Book for November 10, 1999 which, as can be seen, does not contain any indication of receipt of the Notice of Abandonment. Had the Notice of Abandonment been received by the attorneys of record, an entry would have been made in the Master Docket Book under the date November 10, 1999 indicating that a petition for withdrawal of the Notice of Abandonment was due on that date. A similar entry would have been made on the front face of the file jacket. Neither the docket records nor the file jacket contain any indication of receipt of the Notice of Abandonment mailed September 10, 1999.

The Adams Declaration states unequivocally that neither the Notice of Allowance and Issue Fee Due nor the Notice of Abandonment were received by the attorneys of record and states that a search of the file jacket and docket records indicates that neither PTO communication was received. In addition, the Adams Declaration states that the docket records of the attorneys of record were searched for the period from November 10, 1999 through January 10, 2000 (in the event the Notice of Abandonment was misdocketed for three months or even four months instead of two months) and that the docket records contain no indication of receipt of the Notice of Abandonment.

While it is may be unusual for two PTO communications pertaining to the same application not to have been received, such has occurred on prior occasions. As stated in the Adams Declaration, the attorneys of record are aware of other occasions in which two PTO communications were not received in the same application. As unusual as such a circumstance may be, it has occurred in the past and has occurred in this application. Based on all of the known and available evidence, it can be stated with certainty that neither the Notice of Allowance and Issue Fee Due mailed July 6, 1999 nor the Notice of Abandonment mailed September 10, 1999 were received by the attorneys of record.

**Petition Fee**

No petition fee is believed required in connection with this Renewed Petition under 37 CFR §1.181. However, should it be determined that a petition fee is due, authorization is hereby given to charge any such fee to our Deposit Account No. 01-0268.

Relief Sought

In view of the foregoing, applicants respectfully request that the Notice of Abandonment be vacated, that the application be restored to the pending files, and that a new Notice of Allowance and Issue Fee Due be mailed.

Respectfully submitted,

ADAMS & WILKS  
Attorneys for Applicants

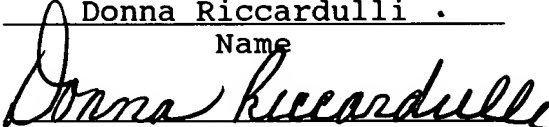
By: 

Bruce L. Adams

17 Battery Place  
Suite 1231  
New York, NY 10004  
(212) 809-3700

MAILING CERTIFICATE

I hereby certify that this correspondence is being deposited with the United States Postal Service as first-class mail in an envelope addressed to: COMMISSIONER FOR PATENT, P.O. Box 1450, Alexandria VA, 22313-1450, on the date indicated below.

Donna Riccardulli .  
Name  
  
Signature

OCTOBER 16, 2006  
Date



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

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Application of : OCT 27 2006  
Takayoshi SUZUKI et al. :  
Appln. No. 09/273,286 : Art Unit - 3737  
Filed: March 19, 1999 :  
For: OPHTHALMIC APPARATUS : Docket No. K036-3629

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COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, VA 22313-1450

DECLARATION OF BRUCE L. ADAMS IN SUPPORT OF RENEWED PETITION

I, Bruce L. Adams, declare as follows:

1. I am an attorney registered to practice before the U.S. Patent and Trademark Office (Reg. No. 25,386) and am in charge of the Takayoshi SUZUKI application identified above ("the SUZUKI application").

2. I prepared the Petition for Withdrawal of Notice of Abandonment ("Petition") filed by Certificate of Mailing dated December 5, 2005 and the accompanying Renewed Petition and have firsthand knowledge of the facts stated therein.

3. The standard procedure followed by the attorneys of record concerning incoming mail, which has been in continuous practice since before 1999 and remains the practice today, is that all incoming mail from the PTO is opened and, where applicable, entered in the Master Docket Book by the docket clerk, after which the docket clerk places the PTO communication in its corresponding file jacket and makes an appropriate notation on the face of the file jacket. Subsequently, the PTO communication is photocopied and reported to the client.

4. Annexed to the Petition are true and correct copies of the complete page of the Master Docket Book for October 6, 1999 and the front face of the file jacket of the SUZUKI application. Neither the file jacket nor the docket records contain any indication of receipt of the Notice of Allowance and Issue Fee Due mailed by the PTO on July 6, 1999.

5. Annexed hereto as Exhibit A is a copy of the Filing Receipt for the SUZUKI application received by the attorneys of record. In the case of Filing Receipts, the filing date and application number are entered on the front face of the file jacket, on the second line, in the blank spaces following the notations "SERIAL NO." and "FILED," and there is no other location on the file jacket for entry of this data.



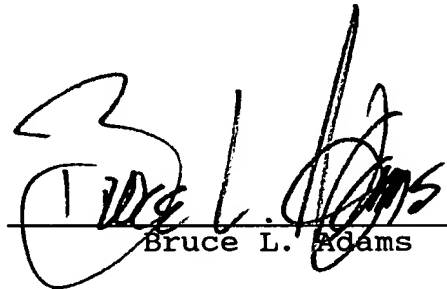
6. If the Notice of Abandonment mailed September 10, 1999 had been received by the attorneys of record, a docket entry therefor would have been made in the Master Docket Book under the date of November 10, 1999, which is two months from the date of mailing of the Notice of Abandonment. Annexed hereto as Exhibit B is a true and correct copy of the complete page of the Master Docket Book for November 10, 1999, which does not contain any indication of receipt of the Notice of Abandonment. A similar entry would have been made on the front face of the file jacket beneath the heading "OFFICE ACTIONS" and as can be seen from examining the front face of the file jacket attached to the Petition, no entry appears thereon.

7. In the event the Notice of Abandonment had been received by the attorneys of record and was mistakenly misdocketed for three or possibly four months instead of two months from September 10, 1999, a docket entry would appear in the Master Docket Book under December 10, 1999 or January 10, 2000. I have reviewed the Master Docket Book for the dates November 10, 1999 through January 10, 2000 and state that the docket records contain no indication whatsoever of receipt of the Notice of Abandonment.

8. I have made a thorough search of the file jacket of the SUZUKI application and the docket records maintained by the attorneys of record and state unequivocally that neither the Notice of Allowance and Issue Fee Due mailed July 6, 1999 nor the Notice of Abandonment mailed September 10, 1999 were received by the attorneys of record.

9. During my 37 years of practice before the PTO, I or my partners or associates have experienced several occasions in which two communications mailed from the PTO were not received in the same application. Though in my experience this is an unusual circumstance, it has occurred in the past and has occurred in this application. Based on all of the information known to me and all available evidence, I can state with certainty that neither the Notice of Allowance and Issue Fee Due nor the Notice of Abandonment were received by the attorneys of record.

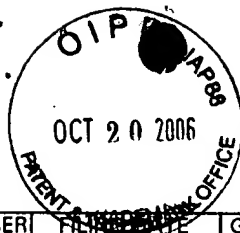
I declare that all statement made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements or the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of this application or any patent resulting therefrom.



Bruce L. Adams

Dated: New York, NY  
October 16, 2006

FILING RECEIPT



UNITED STATES DEPARTMENT OF COMMERCE  
Patent and Trademark Office  
ASSISTANT SECRETARY AND COMMISSIONER  
OF PATENTS AND TRADEMARKS  
Washington, D.C. 20231

APPLICATION NUMBER	FILING DATE	GRP ART UNIT	FIL FEE REC'D	ATTORNEY DOCKET NO.	DRWGS	TOT CL	IND CL
09/273,286	03/19/99	3737	\$760.00	KO36-3629	4	7	1

ADAMS & WILKS  
50 BROADWAY  
31ST FLOOR  
NEW YORK NY 10004

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Receipt is acknowledged of this nonprovisional Patent Application. It will be considered in its order and you will be notified as to the results of the examination. Be sure to provide the U.S. APPLICATION NUMBER, FILING DATE, NAME OF APPLICANT, and TITLE OF INVENTION when inquiring about this application. Fees transmitted by check or draft are subject to collection. Please verify the accuracy of the data presented on this receipt. If an error is noted on this Filing Receipt, please write to the Application Processing Division's Customer Correction Branch within 10 days of receipt. Please provide a copy of this Filing Receipt with the changes noted thereon.

Applicant(s)

TAKAYOSHI SUZUKI, HAMAMATSU-SHI, JAPAN; NORIHIKO YOKOI,  
KYOTO-SHI, JAPAN.

FOREIGN APPLICATIONS- JAPAN 71615/98 03/20/98

IF REQUIRED, FOREIGN FILING LICENSE GRANTED 04/07/99

TITLE

OPHTHALMIC APPARATUS

PRELIMINARY CLASS: 351

DATA ENTRY BY: DIXON, DOROTHY L. TEAM: 04 DATE: 04/07/99

1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31 32 33 34 35 36 37 38 39 40 41 42 43 44 45 46 47 48 49 50 51 52 53 54 55 56 57 58 59 60 61 62 63 64 65 66 67 68 69 70 71 72 73 74 75 76 77 78 79 80 81 82 83 84 85 86 87 88 89 90 91 92 93 94 95 96 97 98 99 100

(see reverse)

**Exhibit A**

NOVEMBER

10

WEDNESDAY



1999 314th day - 51 days follow

To Be sptd to 12/10  
~~Sto 109,903~~ ~~Reclamation (Siko)~~

~~1st-3rd: spt., Amend. & Appeal Filed 11/8/99 M.C.~~  
~~Atkins 023,963~~ ~~1st-3rd spt. & appeal~~  
~~and Trial (Siko)\*~~  
~~L.R. 11/2 Paul 11/2~~

~~1st-3rd spt & Response Filed 11/10/99 M.C. Her-France~~  
~~Tam 050,792~~ ~~1st-3rd spt & appeal~~  
~~and Trial (Siko)\*~~  
~~L.R. 10/28 France 10/28~~

~~1st spt. & Response Filed Nov. 10, 1999 M.C.~~  
~~Shoup 035,478~~ ~~1st spt. & appeal~~  
~~Repetition (Siko)~~  
~~L.R. 10/20~~

~~Appel. Filed Oct 26, 1999 E.M.~~  
~~Enon 004-3809~~ ~~Patent Appel.~~

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